Application No.09/891,167
Amendment dated October 3, 2005
Reply to Office Action of May 3, 2005

REMARKS/ARGUMENTS

Claims 1-18 are pending in the application. Claims 1-18 are rejected under 35 U.S.C.

§103(a) as being unpatentable over Singh (U.S. Patent 6,405,035) and Lemelson et al. (U.S.

Patent 6,028,514).

Applicants respectfully submit that nowhere in the cited references is the disclosure,

teaching or suggestion of: "[a] method for forwarding messages, comprising: *monitoring*

locations of responses to incoming messages along with the time of day and day of week; ...

and transferring incoming messages to the location in the trend analysis table with the highest

probability of contacting the user" (e.g., as described in claim 1).

The Office Action states that "it would have been obvious to one of ordinary skill at the

time of the invention was made to combine the inventions of Singh and Lemelson and monitor

the response of the incoming message because monitoring the response will improve Singh's

invention . . .". Applicants respectfully disagree. Applicants agree with the Office Action's

determination that Singh's invention differs from the claimed invention that it does not monitor

the response to the message. The Office Action further asserts that Lemelson teaches an

invention for monitoring a person's location, where a monitor checks for responses to paged

messages (Column 16, line 53 – Column 17, line 14 which state:

> This paging signal is intended to illicit a response from emergency assistance/response personnel that may be in the vicinity or area of the warning unit 12 that issued the original distress message. As indicated in FIG. 5B, *the monitor center 10 checks for responses to the paging message at unit block 206.* If no response to the page is received after a designated time, a check is made to see whether or not "M" paging messages have yet been sent at block 208. If the pre-determined "M" number of tries have not been made, control is passed to unit 12 at block 210 and "K" is increased by one with control being passed back to the broadcast emergency assistance page block 204 for retransmission of the emergency assistance/response paging message. *The retransmission continues until either a response is received at block 206 or a total of "M" tries have been made as indicated in FIG. 5B.* If a response is received, control is passed to block 216 to confirm that emergency assistance/response is en-route to the location of the emergency.

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Returning now to block 208, if after "M" attempts, no response is received to the broadcast emergency assistance/response page, control is passed to dispatch back-up assistance/response block 212 where assistance/response is dispatched even though it may take longer to reach the location of the warning unit 12 than it would have if responded to at the time the alarm message was originated. Attempts to contact back-up assistance/response are continued (i.e. control loops to block 212) until a response message is received at block 214 from emergency personnel. (*Emphasis added*)

As can be seen from the above cited section of Lemelson, the reference is intended to disclose the ability of "...*the monitor center 10 [to check] for responses to the paging message at unit block 206*".   As affirmed by the recent Office Action, merely monitoring for a response to a paged message is not the equivalent of monitoring a locations of the responses. The cited sections of Lemelson do not specifically disclose "...*monitoring locations of responses* to incoming messages along with the time of day and day of week", as specifically recited in independent claim 1.

The Office Action further asserts that Singh teaches monitoring the location of access to incoming messages along with the time of days and day of week (column 3, lines 18-31). Column 3 line 18-23 of Singh state:

Subscriber agents 19 monitor the message status of each subscriber *message including receipt, storage, and access of messages within each of their respective devices 16*. Subscriber agent 19 further signals the information to the master agent 21. Master agent 21 monitors the status of each of the messages on each device 16 and ensures redundant messages are not accessed. Agents 19, 21 are active and persistent software components that perceive, reason, act, and communicate. Agents are disclosed in the book "Readings in Agents", edited by Michael N. Huhns and Munindar P. Singh, herein incorporated by reference in its entirety.

Host server 10 may further maintain a record of each message sent to a subscriber and the access time and date. (Emphasis added)

Applicants respectfully disagree for at least two reasons. First, the "access time" concept disclosed in Singh is clearly not the equivalent of *monitoring the time of day and day of week of*

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responses to incoming messages as recited in the embodiment. Access time merely indicates the

time a message is accessed, a limitation that is dissimilar to that described in the embodiment of

claim 1. Therefore, the cited section is inadequate to support a proper 35 U.S.C. § 103(a)

rejection.

Second, the cited sections (not cited in the previous Office Action) of Singh disclose

"monitor[ing] the message status of each subscriber message including *receipt, storage, and*

access of messages within each of their respective devices 16". But the cited Singh does not

specifically disclose the "...*monitoring locations* of responses to incoming messages..." as

specifically recited in independent claim 1. The notion of monitoring the location of responses

is not addressed at all in the cited sections of Singh. Again, the cited section is inadequate to

support a proper 35 U.S.C. § 103(a) rejection.

Therefore, it is clear that neither the Singh nor Lemelson reference teach, suggest or

disclose a method for forwarding messages including at least monitoring locations of responses

to incoming messages along with the time of day and day of week. Independent claims 1, 7,

and 13 contain substantively similar limitations and therefore are also allowable for similar

reasons. Claims 2-6, 8-12 and 14-18 depend from allowable independent claims 1, 7, and 13,

and therefore are in condition for allowance as well.

In addition and in the alternative, Applicants respectfully submit that there is no

suggestion or motivation to combine Singh and Lemelson beyond the impermissible use of

hindsight. Applicants submit that a *prima facie* case of obviousness has not been made. The

MPEP requires that the references must suggest making the combinations. MPEP §2141.01

(citing Hodosh v. Block Drug Co., Inc.); §706.02(j) (the initial burden is on the examiner to

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provide a convincing line of reasoning with explicit or implicit suggestions to combine references).

Merely stating that it would have been obvious for a person of ordinary skill in the art to combine references, without pointing to a specific hint or suggestion to combine, has been rejected by the Federal Circuit, as an invalid basis of rejection under 35 U.S.C. §103. *In re Lee*, 277 F.3d 1338, 1343 (Fed. Cir. 2002)(the court held that rejecting a conclusory statement that it would have been obvious to combine the references without evidence of a teaching, motivation, or suggestion to select and combine the references, citing numerous case); *In re Dembiczak*, 175 F.3d 994,999 (Fed. Cir. 1999) ("Our case law makes clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references.") In this case, the Office Action has taken the concept of "responses to paged messages" allegedly disclosed in Lemelson and combined it in an ad hoc fashion to Singh form the basis of its rejection. However, there is no teaching, suggestion or motivation to combine to be found in the references that adequately form the basis of a proper 35 U.S.C. §103(a) rejection of independent claim 1. Independent claims 1, 7, and 13 contain substantively similar limitations and therefore are also allowable for similar reasons. Claims 2-6, 8-12 and 14-18 depend from allowable independent claims 1, 7, and 13, and therefore are in condition for allowance as well.

It is believed that this Amendment places the application in condition for allowance, and early favorable consideration of this Amendment is earnestly solicited.

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Atty. Docket No. 2207/11666
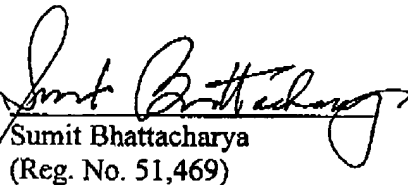**PATENT APPLICATION**

If, in the opinion of the Examiner, an interview would expedite the prosecution of this

application, the Examiner is invited to call the undersigned attorney at the telephone number

listed below.

The Office is hereby authorized to charge any fees, or credit any overpayments, to

Deposit Account No. **11-0600.**

Respectfully submitted,
KENYON & KENYON

Dated: October 3, 2005

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